

57. The apparatus of claim 32, wherein at least a portion of the distal portion is hollow.

58. The apparatus of claim 57, wherein the distal portion has a substantially uniform wall thickness.

### REMARKS

Favorable reconsideration of this application is requested in view of the foregoing amendments and the following remarks. Claims 30-58 are pending.

Claims 1-29 are cancelled without prejudice or disclaimer.

Support for the recitation that the sensors positioned in an interior of the distal portion is found at lines 1-3 of page 13 of the specification as originally filed. The amendment does not add new matter.

Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 1, 28 and 29 are amended to specify that the coaxial distal portion is co-axial with the proximal portion.

The coaxial arrangement can be appreciated from the figures forming part of this application. The term coaxial can be defined as having a common axis or coincident axis. For an example of a non-coaxial arrangement, the Examiner is referred to the Makower and Ishihara references where the laser tip/probe diverges at an acute angle as discussed below in more detail.

Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makower in combination with Ishihara et al. The Examiner is still holding the position that sharp and blunt ends on a treatment probe are equivalent (somehow obvious) and combinable with Makower under 35 U.S.C. 103 "to produce a device having the three main elements is (sic) applicants' independent claims".

Referring to Makower, Figures 2, 3, 7, 8, 10 and 11, a sharpened needle tip 34 is disclosed. This sharpened needle tip 34 is extended from the catheter at an acute angle.

Referring to Ishihara, Figures 1-8, a laser probe 12 is disclosed. The laser probe 12 has a sharp tip 33. The laser probe 12 extends from the instrument at an acute angle.

The acutely diverging tip/probe of the references is in contradistinction with the explicitly claimed coaxial distal portion of the invention. The references do not even suggest a coaxial arrangement.

In addition, the claims are amended to require that the sensor is positioned at an interior of the distal portion. This limitation is not disclosed or suggested by any combination of Makower and/or Ishihara. It is noted that the two supplemental references cited by the Examiner in the Office Action were not applied in a grounds of rejection.

In addition, with respect to claims 1-27, the pointed tips/probes of Makower and/or Ishihara are in contradistinction to the explicitly claimed limitation of positionable in contact with the surface of a selected site without penetrating the surface of the selected site. With respect to claims 1-27, the Examiner's assertion that the disclosures of the references are equivalent to the invention ignores an explicit linguistic distinction that is clearly recited in the claims.

Accordingly, withdrawal of this rejection is respectfully requested.

Other than as explicitly set forth above, this reply does not include an acquiescence to any statements by the Examiner. In view of the above, the claims are considered allowable and favorable action is requested. In the event that there are any remaining issues, the attending to of which would expedite the allowance of this application, the Examiner is invited to contact the undersigned for prompt action at the telephone number appearing below.

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The Commissioner is hereby authorized to charge payment of any deficiency or credit any overpayment to Deposit Account No. 23-2415.

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